

**The Virginia Indigent Defense Commission
Commission Meeting
1604 Santa Rosa Road, Suite 109
Richmond, Virginia 23229
November 29, 2007**

Professor Robert Shepherd called the meeting to order at 11:20 am. Other Commission members in attendance were Steve Benjamin, Maria Jankowski, Carmen Williams, Jo-Ann Wallace, David Lett, Eddie Macon (designee for Karl Hade), James Towey (designee for Delegate Dave Albo), Chris Anderson, and Judge Edward Hanson. Staff present included, Carlos Hopkins, Laura Still, Diane Pearson, Executive Director, David Johnson; and Deputy Director, DJ Geiger. Michael Jay with House Appropriations and Jerry Gentile from the Department of Planning and Budget were also present.

Ms. Jankowski moved to approve the agenda.

Mr. Anderson seconded the motion.

The motion carried.

Mr. Benjamin made a motion to approve the minutes of the August 16th Commission meeting.

Mr. Lett seconded the motion.

The motion carried.

The next item on the agenda is the proposed Commission meeting dates for 2008.

The agreed upon dates are: Monday, April 7th, which is during the Public Defender Conference in Virginia Beach; Thursday, June 19th, Thursday, September 18th, and Thursday, November 20th.

No vote was needed.

The next item on the agenda is new lodging rates. Mr. Johnson reported that the new rates have been adopted by the Office of the Comptroller. Most of the rates have not been changed in a while.

Judge Hanson made a motion to approve the new lodging rates for the Commission.

Mr. Anderson seconded the motion.

The motion carried.

The next item on the agenda is the budget. Mr. Johnson stated that there is not tab in the binder because we have not asked for anything in the budget as discussed in the August 16th meeting. We had some special funding last year to help out with our turnover problem. The way we left it with the Commission is if we saw an opportunity to meet a specific need, we would make a budget request and we have not seen that opportunity, in fact with the budget outlook it would be quite the opposite. There are some technical adjustments that will be and have been made but as far as anything additional, there isn't anything.

This year with the Governor's budget, our understanding, from talking with our budget analyst, Reginald Thomas, will include, in essence, a give back of \$200,000 from us that will help meet the budget shortfall. We talked about this in August. We have frozen pay practice accounts in anticipation of this perhaps happening. While \$200,000 is a lot of money to us and will hurt, the good news is it won't affect the salary structure that we've finally gotten and wouldn't cause us to have a hiring freeze. Both of those things would be counterproductive because the reason we got the money was because we had to turn away cases because of our turnover and vacancy rate. The raises went into effect November 25th; employees will see the raise on their December 16th paycheck. In the budget, although we're independent, we're listed as a judicial branch agency and I think the judicial branch agencies are giving back about \$1 million and our contribution of that is \$200,000. Of course, we don't know what the General Assembly is going to do and \$200,000 is manageable without impacting our services.

There was discussion on the vacancies and the impact of the new salaries and the turnover rate. There's a deeper applicant pool and one of the field offices is at full staff for the first time ever and positions aren't staying vacant as long. It's a positive that things have stabilized.

The next item on the agenda is training. Mr. Johnson reported that with the addition of Ms. Danielle Ferguson many of the things we wanted to do can be done. The new training room is under construction, demolition was started this week. It should be completed by January 20th. The conference room such as the one we're in today is not part of our office; it belongs to VCU VISSTA and can be very hard to obtain for meetings. Training off-site can be very costly. The capacity of our new training room is forty people. We're also going to have some state of the art recording equipment which is a big bonus, and even more of a bonus is we got \$20,000 to pay for it in a grant from DCJS. Part of the requirement is that a significant part of the training is going to be juvenile training, which is what we wanted to do anyway. The recording equipment is going to allow us to make quality DVD's. We have a full slate of trainings already lined up.

Two bar associations, Virginia Beach and Norfolk, (combined) and Portsmouth have agreed to regularly start hosting certification trainings for us. Alexandria has already been doing that for us through the Alexandria Law Library. The southwest part of the state has done this also.

There's also what we call the lunchtime lecture series. The concept here is to have speakers come in to do a one hour CLE. We'll advertise that it will be a one hour CLE

on various topics. We'll be able to record those lectures and create a library of topics. This will also allow us to target specific trainings with another good use of our training room. The trial workshop program attempts to address the biggest concern we've had for people who are new in the system. They go through the certification training but what they really feel they need is some hands-on trial skills training, which is something we give the Public Defenders through Boot Camp but we haven't figured out a way to get that to everyone. This is a start through a trial workshop program that Mr. Hopkins is developing for anyone who will be doing court appointed work the training will be at no cost.

Mr. Johnson reported that the Standards of Practice Enforcement is in place.

Mr. Johnson continued with the complaint process for the Standards of Practice, which is on our website. It's a pamphlet, if someone calls in, they can get it. The statute required us to develop a process for fielding complaints for violations of Standards of Practice. He went on to say that at this point we haven't received a qualified complaint. The Standards of Enforcement allow you to remove someone from the court-appointed list. We have the complaint process set up. We have put together an enforcement panel. These are members of the private bar and Public Defenders who have volunteered to serve a two-year term. There are quarterly meetings set up where we'll have panels of three to review any complaints that have come in. Several of these people were actually involved in the development of the enforcement piece and the Standards of Practice.

Mr. Johnson explained that the April 7th meeting will be in Virginia Beach but not at the Renaissance Hotel; instead it will be at the Founders Inn, which was the low bid and it looks like it will meet our needs. We have seven offices in the Tidewater area with about 130 attorneys which saves mileage and hotel costs. We have to limit this to 265 attendees. Normally, we have around 300 lawyers. By limiting it to 265 we get into a different class of hotels, more variety and less expensive.

Mr. Johnson continued with explaining that employees who travel will be required to keep a log rather than to just estimate mileage at the end of the month. This has been given to the offices and so far hasn't created a problem. The Public Defenders didn't have a problem implementing this new procedure because they are concerned about their budgets and spending so much on mileage.

Another concern is to get everyone to car pool to conferences because of the cost. We have a new policy that says that if more than one employee is going to the same training or meeting they are required to car pool. If an employee decides not to car pool, that employee will get reimbursed at half the state rate. Plus there is always parking to factor in to the expense and by car pooling we save on parking as well.

There are exceptions to the car pool policy, for instance, if someone has a jury trial and can't make the car pool, we will grant them the full reimbursement.

There was discussion about the Founders Inn and the difference in price of the other hotels and the grounds are isolated and walking is not an option as far as leaving the facilities. The decision was made in accordance with the requirements of the

Procurement Act and the Founders Inn was the lowest bid. The discussion continued with perhaps including the Commission Members in the decision making process for the Annual Public Defender Conference as there are some people with philosophical problems with certain locations.

Mr. Johnson said that philosophical problems would not get by the auditors. His understanding is that we take the lowest responsive and responsible bidder. He agreed to supply the Commission Members with a list for hotels for the 2009 Public Defender Conference to get their comments and suggestions.

Mr. Anderson commented that the Executive Director was given the authority to make these decisions.

Ms. Geiger added that it's the way the bid is developed, to require certain specifications. Those specifications need to be logistical, objective types of things and we can look into that.

The April 7th meeting is held during the Public Defender Conference so the Commission Members can meet and talk with the Public Defenders. When the organization was smaller there was more contact between the Public Defenders and the Commission Members, however, since we've grown, that has become more of a challenge.

Mr. Johnson said that the plan for the meeting in Virginia Beach is to have the Executive Committee meet from 11:00 to 11:30 and after that have a meet and greet period for the Public Defenders and then start the Commission meeting about 12:00 to 12:15.

Professor Shepherd encouraged all Commission Members to stay for as much of the conference as they can, consistent with their other commitments. He commented that the programs the past couple of years have been outstanding.

Judge Hanson made a motion to adopt the new mileage reimbursement policy for conferences and trainings.

Mr. Lett seconded the motion.

The motion carried.

Professor Shepherd noted that in the training schedule, the Commission is once again collaborating with the University of Richmond Law School to do a juvenile conference the third Friday in May, which has been well attended in the past.

Mr. Johnson reported that in September we had a management training for the Public Defenders in Hampton. We put together a Public Defender manual for them. It's a first attempt, it will get much bigger, but the areas we've covered are the areas that were crucial for us.

Mr. Johnson then explained several of the tabs in the new manual, which is set up with checklists and forms to be used for various procedures. Most of the Public Defenders have viewed this as a positive, having this kind of guide to help them out.

He went on to say that during the conference he and Ms. Geiger met with each of the Public Defenders individually, to discuss how things were going, their caseloads, etc. One of the things they're finding difficult is balancing their caseload with demands of managing their offices.

The next item on the agenda is online legal research services. We have a contract with Westlaw for online legal research which we've had for three years. We were planning to renew it; however, we don't think it was set up properly three years ago. It was set up through a procurement order and it needs to be done through a competitive process. Under the new contract there will be a slight increase to \$75,000. This gives our lawyers ninety to ninety-five percent of what they need, and it comes out to about \$210 per lawyer each year.

The way the statute was written, Mr. Johnson has the authority to spend up to \$15,000 without the Commission's approval. This contract will come up before the next Commission meeting.

Mr. Benjamin made a motion to direct the staff to proceed with procurement of a new contract for online legal research services and to authorize the Executive Director to execute the contract for such services, based on the bids.

Ms. Wallace seconded the motion.

The motion carried.

There was discussion about the difference between other vendors such as Fastcase and LexisNexis.

Judge Hanson moved that the Virginia Indigent Defense Commission convene in closed session to discuss personnel issues pursuant to the personnel exemption contained in §2.2-3711(A) (1) of the code of Virginia.

This meeting will be attended only by members of the Commission however, pursuant to §2.2-37(12) (F) of the code of Virginia, the Commission also requests the attendance of the Executive Director, David Johnson and the Deputy Executive Director, DJ Geiger because it is reasonable to believe that their presence will aid the Commission in its consideration of the matters which are the subjects of the closed session.

Mr. Anderson seconded the motion.

After reconvening into open session, Judge Hanson moved for a roll call vote asking that each member certify that to the best of his or her

knowledge, during the closed session, the Commission heard, discussed, or considered only public business matters that were lawfully exempted from open meeting requirements under the Freedom of Information Act and were identified in the motion by which the closed session was convened.

All members certified.

The next item on the agenda is the policies and procedures update.

Ms. Geiger reported that there were immediate proposed changes when the first employee handbook was distributed to the offices. We received input from the Public Defenders and the Directors in this office regarding errors, changes and anything we needed to correct or add. We submitted this to the working group and then ultimately the Policies and Procedures Committee who went through it and made a few more changes. What you have in your binder is what is proposed. Most of which is technical or clean-up but there are about four areas on which we need some additional input from the Commission Members.

Initially we had language in here that said the “Public Defender shall inform attorneys of....” The objection to that was we didn’t want to prove the Public Defender told every single person everything in this manual. We changed the language to say, “Employees shall inform themselves of the rules of standards of practice or the rules of ethical behavior...” we changed it so it’s not a duty of the Public Defender anymore; actually it’s something that is required of employees.

Section 6.12 - Educational Leave. The recommendation of the Policies and Procedures Committee is to strike this section. This section was used when computers started to be more prolific and not everyone would’ve had computer or word processing experience. Educational leave was used for employees to get training to do their jobs. This also requires that an employee’s job be kept open while they are at this educational training or schooling which isn’t always feasible and is a hardship on the offices. The committee recommended that that section just be eliminated.

Section 6.15 - Hardship Leave. This section was previously amended to require the Executive Director’s approval instead of the Public Defender’s approval. There was additional discussion this year in that hardship leave in combination with all other leaves that are available to employees is just not necessary. The recommendation of the committee is to strike this section as well.

Section 10.3 - Non-Conference and Non-CLE Education. This section goes hand in hand with educational leave. This is where employees can request that we pay for their educational programs or degrees.

Mr. Johnson added that he received pursuant to this section a request from an investigator that was approved by the Public Defender, for us to pay for his Masters’ degree which was going to be \$25,000. If an employee needs to take a job related course, we can pay for that, this is something completely different. Most of our employees come to us with the degree they need to do their job.

The recommendation of the committee is to strike this section also.

There was discussion regarding the training that everyone gets in relation to their job and their leave status while in training. The leave status while in training is they are working.

Ms. Geiger went on to say that in Section 6.12, the recommendation would be to strike section A and C. The proposal of the committee was to eliminate the entire section but Ms. Geiger's suggestion is to keep item B as we need to retain the definition "agency initiated course" cross-referenced in Section 10.3.

The only other section that had a substantive change is the grievance section. We made the change to the statute last year exempting us from the personnel act making our employees all "at will". When we did that, Mr. Horsley advised us that we do not need the third resolution step anymore. His suggestion was to strike that. In doing so, though, we needed to amend Section 9.5. It basically says that the Executive Director would have the ability to look at the issues and the relief that had been requested and if he finds that it's warranted, provide that relief, based on the authority that the Commission gives him to do so.

Ms. Geiger continued, behind the red divider in the binders is the Authority of the Executive Director. There's a new paragraph 5 which deals with grievance procedures. It says that except for grievances that are filed against the Executive Director, he would be given the authority to review, investigate and make determinations regarding the issues and the relief requested in grievances up to the amount of \$15,000, which is his current limit on contracts. Anything above that would be the Commission's decision at its next regularly scheduled meeting.

Ms. Geiger went on to say that other than the leave sharing policy, which we will go into in a minute, those were the major substantive changes that the committee wanted the Full Commission to take a look at. While we were changing the Executive Director's authority, we realized in the authorizing statute for the Commission, that while Mr. Johnson has the authority to hire Public Defenders with notice and to set salaries, he does not have the authority to hire administrative staff. So, we have added in paragraph 4, under hiring authority, a new paragraph B that provides hiring authority subject to the allocation of employee positions by the Commission. We feel that this covers the hole in the statute and eliminates the requirement to wait until a quarterly meeting.

There was discussion regarding hiring and compensation.

Ms. Geiger responded that the compensation plan that has been approved by the Commission requires everyone to start at entry level salaries.

Judge Hanson made a motion to adopt the changes that have been submitted by the subcommittee and the revisions that have been made here at this meeting.

Ms. Jankowski seconded the motion.

The motion carried.

The next item on the agenda is Leave sharing.

Ms. Geiger reported that we contacted DHRM (Department of Human Resource Management, the executive branch human resources department), and the Attorney General's Office with regard to the Leave sharing program. This is Section 6.1.

Leave sharing is not a required policy, DHRM has it, and we currently have it. Because it is not required, you don't have to do the program at all or you can do it in any format that you want. Currently it only applies to the employees that remain under the traditional sick leave plan, which means that they were hired before 1999. We have nineteen such people in the system, and they opted to stay in the old system.

Mr. Johnson added that in 1999 everyone was asked if they wanted to change into the new program which has better disability or if they wanted to keep the old program where you accrue sick leave and now out of 540 employees there are only 19 who are still under the old system. This means they don't get short or long term disability; there are certain protections they have given up in order to continue accumulating high volume leave.

The way leave share has worked at the Commission previously is if you have accumulated extra leave and you can't use it by the end of the year and you're going to lose it, you can put it into a pool and people who need it can request it. You do have to use all of your available leave and be in a leave without pay status in order to qualify for leave sharing the way it's written now. Currently we only provide this for the nineteen folks in the system. DHRM provides it for the traditional sick leave individuals and then it also provides it for the family members of people who are in the new short term disability plan. If there's a sickness in the family and you want to take care of a parent and you have no leave left of your own and it's a FEMLA qualified status, you can get leave share donated to you for that but not for yourself. It's a very complicated structure as currently set up; ours is more simplified because it only applies to the traditional sick leave people.

If we were to amend it, it will become complicated to actually administer it. This would put us in line with the executive branch.

Mr. Johnson added that the Supreme Court has a version of this and it's a nightmare. It requires a full time staff person to administer this and we don't have a full time person to do this. The thought of the committee is that we should do it for everyone not just the nineteen people. Which sounds great, however, if we do it for everyone, who's going to administer it?

There was discussion regarding the thoughts of the Executive Director and Deputy Directory and their thoughts were that we'd need to hire someone to administer it. Mr. Johnson added that he doesn't have the ability to hire someone to do it. He also commented that as State employees, we get a remarkable amount of leave compared to people in the private sector.

Mr. Benjamin made a motion recommending to completely eliminate leave sharing.

Judge Hanson seconded the motion.

Mr. Benjamin withdrew is motion.

Judge Hanson withdrew his second.

This section will be left as is for now.

The staff will come back with a recommendation for any other options.

Mr. Jerry Gentile from the Department of Planning and Budget, the Best Practices Division introduced himself and explained that he's here to take a look at the Agency as a whole to get a better feel for whether or not the Agency is organized in a way that would make it more efficient or if it's organized in a way that makes it less efficient, in terms of communication, technology, personnel, skill sets. Are the right people in the right places with the right skills. Your organization has grown immensely in the past few years in the terms of dollars and staff.

Sometimes (he's not necessarily saying this agency) agencies don't realize how big they've gotten and continue to do the same things because that's the way they've been done. We just make recommendations, we do not push agencies to do things a certain way.

We've contacted almost everyone in the administrative office and are just starting to contact some of the Commission Members to get their input as well, on how they look at the agency, in terms of communication, staffing levels, problems with key constituents.

We hope to have something done by April for the next Commission meeting so you can look it over. Although he can't say what issues are emerging, so far they are very happy with the reception they've gotten and with the trends in what people are telling them. People are very forthcoming in talking about the agency. A lot of times we see agencies with high turnover where morale has hit rock bottom. With this agency, morale seems to be very good and upbeat, despite the fact that there's been a history of high turnover, which is very interesting.

He continued by saying there are five people in his workgroup and they will continue the interviewing process.

Ms. Geiger reported that the first phase of the caseload study has been completed and that we will be meeting with the National Center for State Courts (NCSC) consultants next week to discuss the next phase.

Mr. Johnson added that staff and attorneys in the field offices spent four weeks on phase one and did a great job keeping track of their billable hours. The compliance

rate was in the high nineties. The Public Defenders did a great job of ensuring participation.

The next items on the agenda are the strategic plan and ARMICS.

Ms Geiger reported that the copy of the strategic plan is in VA PERFORMS format, which is the software that DPB uses for entering the information. There are specific fields that need to be filled out. She has worked with DPB on what they required in those specific fields. She also said that she has our service plans information in there as well.

For ARMICS, Laura Still is working on stage two. It's very transaction and analysis driven. March 31, 2008 is the deadline for stage two.

Ms. Geiger said that the only thing we need from the Commission is that you agree that those documents are sufficient, we've filed them, you don't have any changes and that they are adequate for your purposes. That's all we're looking for there.

The APA/VITA guidelines which Ed Ernouf is working on, has four deadlines coming up; he is on track to meet each of those.

Ms. Geiger reported that on the Legislative update, the Executive Committee met last year to review legislation and to get input on it. She has two possible dates to suggest, for the next meeting, one is Tuesday, January 22nd and the other is Thursday, January 24th. Those dates are at the end of filing periods for all legislation.

Ms. Geiger went on to say that she's looking for a patron or patrons for our bill which extends the sunset language that requires the courts to let us know if they have appointed off list. She has requests in to the two gentlemen that put that language in there in the first place and hasn't heard from either of them at this point.

She said we talked about the capital qualifications and the apparent hole in the statute that does not allow us to really remove anyone from the list. This is the piece that we worked with the Supreme Court and the Virginia State Bar on developing the qualifications but there is no removal if someone is not meeting those qualifications. She spoke with Katya Herndon at the court and in discussing it she thought that would be a project that was going to need a little more time and wouldn't be ripe for this session. They want to put a working group together and they want to do that after the 2008 session. So that's been pushed back.

The last thing on the legislative update is we have been contacted by the VBA about a legislative proposal that would allow for requests for experts and payment of experts to be heard ex parte, and they're just looking for a pulse from the Commission as to whether they would support legislation that allows for that.

Ms. Wallace made a motion that the Commission support in principle legislation that would allow for motions for the payment for experts to be done ex parte.

Judge Hanson seconded the motion.

The motion carried with Mr. Macon and Mr. Benjamin abstaining.

Ms. Geiger reported that the website will be changed, hopefully, before Christmas. We have had all the training with only a few substantive items that still need to be done.

Mr. Johnson said that he attended the NLADA national conference in Tucson earlier this month. He attended two sessions he found very timely and instructive. One was on disaster planning. We do have a plan but we need a much more detailed plan which is on our project board now. It's something other states are struggling with as well.

The other session was on loan forgiveness which has actually been signed into law, as the College Cost Reduction Act. When someone comes out of law school and for instance they owe \$100,000 in school loans and their payment schedule over ten years would require them to pay \$1100 per month, if they are working in public interest and making \$50,000 their monthly payment would be about \$450 per month. They pay that if they stay for ten years, the balance is then forgiven. This is very specific to each person. We're putting together a package for when we do our interviewing this year and we're also going to get it out to all of our current employees.

Judge Hanson moved to adjourn the meeting.

Mr. Benjamin seconded the motion.

The motion carried.

The meeting adjourned at 1:55 pm

Respectfully Submitted:

Approved By:

Diane Z. Pearson, Administrative Assistant

David J. Johnson, Executive Director